

**MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

UNITED STATES v. BOONYLAM I. THRUANGSNGA

Case No. 11-po-036-JDR

THE HONORABLE JOHN D. ROBERTS, United States Magistrate Judge
Jo Ann Mingo, Judicial Assistant, Magistrate Judge's Office

MINUTE ORDER FROM CHAMBERS

The Trial by Court set for November 18, 2011 at 1:00 PM, will now be calendared as a Proposed Change of Plea Hearing. The clerk without authority erroneously accepted defendant's plea, and closed the proceedings. Accordingly the clerk is directed to reopen these proceedings and defendant shall appear as previously ordered.

Class B Misdemeanors are defined as petty offenses. 18 U.S.C. § 19. Pleas to Class B Misdemeanors are governed by Rule 58 of the Federal Rules of Criminal Procedure. In a case involving a petty offense for which no sentence of imprisonment will be imposed, Rule 58(c)(1) provides: "The court must not accept a guilty . . . plea unless satisfied that the defendant understands the nature of the charge and the maximum possible penalty."

Rule 58(d)(1) addresses the payment of a fixed sum in lieu of appearance. The Rule provides: "If the court has a local rule governing forfeiture of collateral, the court may accept a fixed-sum payment in lieu of the defendant's appearance" D.Ak.L.Cr. Rule 58.2 addresses payment of a fixed sum in lieu of a court appearance. Subsection (a) of that Rule provides that a person who is charged with a petty offense may, in lieu of appearance, pay to the United States the amount indicated by the offense, thereby waiving appearance and forfeiting the amount so paid." Forfeiture of collateral constitutes an admission of guilt. D.Ak.L.Cr. Rule 58.2(a)(2).

Local Criminal Rule 58.2 does not address the timing of when collateral may be forfeited thereby waiving (any) appearance before the court. Consistent with case law a reasonable interpretation of that Rule would construe it to mean that the payment of a fixed sum may be made in lieu of any and all appearances before the court.

However, once a defendant has appeared in court, entered a plea to the offense and bail is set for further appearances, this rule as written no longer provides authority for the payment of collateral in

lieu of a court appearance.

Rule 58(d)(2) provides: "[i]f the defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the district clerk or a magistrate judge may issue a notice for the defendant to appear before the court on a date certain." The Notice "may give the defendant an additional opportunity to pay a fixed sum in lieu of appearance." *Id.* Thruangsnga appeared in court pursuant to a Notice from the Central Violations Bureau. The CVB Notice provided a limited time to forfeit collateral in lieu of a court appearance. The defendant's appearance in court terminated the opportunity to forfeit collateral as provided in the Notice from the Central Violations Bureau.

In the absence of specific authority promulgated by the court, the clerk should not receive "collateral" payment from a defendant or on his/her own initiative close the case.

Entered at the direction of the Honorable John D. Roberts, United States Magistrate Judge

November 4, 2011

Any request for other information or for clarification, modification, or reconsideration of this Order, or for extension of time must be made as a motion. See FED.R.CIV.P. 7(b)(1); D.Ak.LR. 7.1(1). No one should telephone, fax or write to chambers regarding pending cases. The magistrate judge's judicial assistant and/or law clerk are not permitted to discuss any aspect of this case, provide any information or communicate with any person including litigants, lawyers, witnesses and the public regarding cases.

T:\00 C V B\11 cvb\11-po-036-JDR THRUANGSNGA\11-po-036-JDR THRUANGSNGA Order Reopening Case & Setting COP_mtd.wpd